

1 AGREEMENT FOR PROVISION OF
2 HIV HOUSING SERVICES
3 BETWEEN
4 COUNTY OF ORANGE
5 AND
6 STRAIGHT TALK CLINIC, INC.
7 JULY 1, 2017 THROUGH JUNE 30, 2020

8
9 THIS AGREEMENT entered into this 1st day of July 2017(effective date), is by and
10 between the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY),
11 and STRAIGHT TALK CLINIC, INC., a California nonprofit corporation (CONTRACTOR).
12 COUNTY and CONTRACTOR may sometimes be referred to herein individually as "Party" or
13 collectively as "Parties." This Agreement shall be administered by the County of Orange Health
14 Care Agency (ADMINISTRATOR).

15
16 **W I T N E S S E T H:**

17
18 WHEREAS, of December 2016, there were 6,762 residents living with Human Immunodeficiency
19 Virus disease (HIV); and

20 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of
21 HIV Transitional Housing Substance Use Disorder Services described herein to the residents of Orange
22 County; and

23 WHEREAS, these services are for adults who are living with HIV and have a history of substance
24 use disorders; and

25 WHEREAS, these services include housing, food, and case management to assist participants to
26 adjust to community living during or after substance use treatment; and

27 WHEREAS, COUNTY receives funding from the Housing Opportunity for Persons with AIDS
28 (HOPWA) program through the City of Anaheim; and

29 WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and
30 conditions hereinafter set forth:

31 NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained
32 herein, COUNTY and CONTRACTOR do hereby agree as follows:

33 //

34 //

35 //

36 //

37 //

TABLE OF CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
Title Page.....	1
Table of Contents	2
Referenced Contract Provisions	4
I. Acronyms	5
II. Alteration of Terms	6
III. Assignment of Debts	6
IV. Compliance	6
V. Confidentiality.....	10
VI. Cost Report.....	11
VII. Debarment and Suspension Certification	13
VIII. Delegation, Assignment and Subcontracts.....	14
IX. Employee Eligibility Verification	15
X. Equipment	16
XI. Facilities, Payments and Services.....	17
XII. Indemnification and Insurance	17
XIII. Inspections and Audits	21
XIV. Licenses and Laws	22
XV. Literature, Advertisements and Social Media.....	24
XVI. Maximum Obligation.....	25
XVII. Right to Work and Minimum Wage Laws.....	25
XVIII. Nondiscrimination.....	26
XIX. Notices.....	28
XX. Notification of Death	29
XXI. Notification of Public Events and Meetings	29
XXII. Records Management and Maintenance	30
XXIII. Research and Publication.....	31
XXIV. Revenue	31
XXV. Severability.....	31
XXVI. Special Provisions	32
XXVII. Status of Contractor	33
XXVIII. Term	33
XXIX. Termination	34
XXX. Third Party Beneficiary	36
XXXI. Waiver of Default or Breach.....	36
Signature Page.....	37

TABLE OF CONTENTS

<u>EXHIBIT A</u>	<u>PAGE</u>
I. Common Terms and Definitions	1
II. Assurances.....	2
III. Budget	4
IV. Payments	6
V. Records.....	6
VI. Reports.....	8
VII. Services	10
VIII. Staffing	17
 <u>EXHIBIT B</u>	 <u>PAGE</u>
I. Business Associate Contract.....	1
 <u>EXHIBIT C</u>	 <u>PAGE</u>
I. Personal Information Privacy and Security Contract.....	1

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

REFERENCED CONTRACT PROVISIONS**Term:** July 1, 2017 through June 30, 2020

Period One means the period from July 1, 2017 through June 30, 2018

Period Two means the period from July 1, 2018 through June 30, 2019

Period Three means the period from July 1, 2019 through June 30, 2020

Maximum Obligation:

Period One Maximum Obligation: \$208,685

Period Two Maximum Obligation: 208,685

Period Three Maximum Obligation: 208,685

TOTAL MAXIMUM OBLIGATION: \$626,055

Basis for Reimbursement: Actual Cost**Payment Method:** Monthly in Arrears**Contractor DUNS Number:** 096097514**Contractor Tax ID Number:** 23-7134097**Notices to COUNTY and CONTRACTOR:**

COUNTY: County of Orange
 Health Care Agency
 Contract Services
 405 West 5th Street, Suite 600
 Santa Ana, CA 92701-4637

CONTRACTOR: Straight Talk Clinic, Inc.
 5712 Camp Street
 Cypress, CA 90630
 Kathryn Walker / Interim Executive Director
 kathyw@straighttalkcounseling.org

//

//

//

I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Agreement:

A.	AIDS	Acquired Immune Deficiency Syndrome
B.	ARIES	AIDS Regional Information and Evaluation System
C.	ARRA	American Recovery and Reinvestment Act
D.	ASRS	Alcohol and Drug Programs Reporting System
E.	CAP	Corrective Action Plan
F.	CCC	California Civil Code
G.	CCR	California Code of Regulations
H.	CFR	Code of Federal Regulations
I.	CHPP	COUNTY HIPAA Policies and Procedures
J.	CHS	Correctional Health Services
K.	D/MC	Drug/Medi-Cal
L.	DHCS	Department of Health Care Services
M.	DPFS	Drug Program Fiscal Systems
N.	DRS	Designated Record Set
O.	DSM-5	Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition
P.	FTE	Full Time Equivalent
Q.	HCA	Health Care Agency
R.	HHS	Health and Human Services
S.	HIPAA	Health Insurance Portability and Accountability Act
T.	HIV	Human Immunodeficiency Virus
U.	HSC	California Health and Safety Code
V.	IRIS	Integrated Records and Information System
W.	MHP	Mental Health Plan
X.	OCJS	Orange County Jail System
Y.	OCPD	Orange County Probation Department
Z.	OCR	Office for Civil Rights
AA.	OCSD	Orange County Sheriff's Department
AB.	OIG	Office of Inspector General
AC.	OMB	Office of Management and Budget
AD.	OPM	Federal Office of Personnel Management
AE.	PADSS	Payment Application Data Security Standard
AF.	PC	State of California Penal Code
AG.	PCI DSS	Payment Card Industry Data Security Standard
AH.	PHI	Protected Health Information

1	AI. PII	Personally Identifiable Information
2	AJ. PRA	Public Record Act
3	AK. SSI	Supplemental Security Income
4	AL. SUD	Substance Use Disorder
5	AM. TB	Tuberculosis
6	AN. USC	United States Code
7	AO. WIC	State of California Welfare and Institutions Code

8

9 **II. ALTERATION OF TERMS**

10 A. This Agreement, together with Exhibits A, B, and C attached hereto and incorporated herein,
 11 fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the
 12 subject matter of this Agreement.

13 B. Unless otherwise expressly stated in this Agreement, no addition to, or alteration of the terms of
 14 this Agreement or any Exhibits, whether written or verbal, made by the parties, their officers, employees
 15 or agents shall be valid unless made in the form of a written amendment to this Agreement, which has
 16 been formally approved and executed by both parties.

17

18 **III. ASSIGNMENT OF DEBTS**

19 Unless this Agreement is followed without interruption by another Agreement between the parties
 20 hereto for the same services and substantially the same scope, at the termination of this Agreement,
 21 CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of
 22 persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by
 23 mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the
 24 address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of
 25 said persons, shall be immediately given to COUNTY.

26

27 **IV. COMPLIANCE**

28 A. COMPLIANCE PROGRAM - ADMINISTRATOR has established a Compliance Program for
 29 the purpose of ensuring adherence to all rules and regulations related to federal and state health care
 30 programs.

31 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and
 32 procedures relating to ADMINISTRATOR's Compliance Program, Code of Conduct and access to
 33 General Compliance and Annual Provider Trainings.

34 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
 35 Compliance Program, Code of Conduct and any Compliance related policies and procedures.
 36 CONTRACTOR's Compliance Program, Code of Conduct and any related policies and procedures shall
 37 be verified by ADMINISTRATOR's Compliance Department to ensure they include all required

elements by ADMINISTRATOR's Compliance Officer as described in in this Paragraph IV (COMPLIANCE). These elements include:

- a. Designation of a Compliance Officer and/or compliance staff.
- b. Written standards, policies and/or procedures.
- c. Compliance related training and/or education program and proof of completion.
- d. Communication methods for reporting concerns to the Compliance Officer.
- e. Methodology for conducting internal monitoring and auditing.
- f. Methodology for detecting and correcting offenses.
- g. Methodology/Procedure for enforcing disciplinary standards.

3. If CONTRACTOR does not provide proof of its own Compliance program to ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program and Code of Conduct.

4. If CONTRACTOR elects to have its own Compliance Program, Code of Conduct and any Compliance related policies and procedures review by ADMINISTRATOR, then CONTRACTOR shall submit a copy of its compliance Program, code of Conduct and all relevant policies and procedures to ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement. ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a reasonable time, which shall not exceed forty five (45) calendar days, and determine if CONTRACTOR's proposed compliance program and code of conduct contain all required elements to the ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and CONTRACTOR shall revise its compliance program and code of conduct to meet ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the CONTRACTOR's compliance program, code of conduct and any Compliance related policies and procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of CONTRACTOR's compliance program, code of conduct, related policies and procedures and contact information for the ADMINISTRATOR's Compliance Program.

B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or retained to provide services related to this Agreement semi-annually to ensure that they are not designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against the General Services Administration's Excluded Parties List System or System for Award Management,

1 the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and
2 the California Medi-Cal Suspended and Ineligible Provider List and/or any other list or system as
3 identified by the ADMINISTRATOR.

4 1. For purposes of this Paragraph IV (COMPLIANCE), Covered Individuals includes all
5 employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide
6 health care items or services or who perform billing or coding functions on behalf of
7 ADMINISTRATOR. Notwithstanding the above, this term does not include part-time or per-diem
8 employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to
9 work more than one hundred sixty (160) hours per year; except that any such individuals shall become
10 Covered Individuals at the point when they work more than one hundred sixty (160) hours during the
11 calendar year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are
12 made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and
13 procedures (or CONTRACTOR's own compliance program, code of conduct and related policies and
14 procedures if CONTRACTOR has elected to use its own).

15 2. An Ineligible Person shall be any individual or entity who:
16 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in
17 federal and state health care programs; or
18 b. has been convicted of a criminal offense related to the provision of health care items or
19 services and has not been reinstated in the federal and state health care programs after a period of
20 exclusion, suspension, debarment, or ineligibility.

21 3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
22 CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this
23 Agreement.

24 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-
25 annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that
26 its subcontractors use their best efforts to verify that they are eligible to participate in all federal and
27 State of California health programs and have not been excluded or debarred from participation in any
28 federal or state health care programs, and to further represent to CONTRACTOR that they do not have
29 any Ineligible Person in their employ or under contract.

30 5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
31 debarment, exclusion or other event that makes the Covered Individual an Ineligible Person.
32 CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing
33 services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an
34 Ineligible Person.

35 6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing
36 federal and state funded health care services by contract with COUNTY in the event that they are
37 currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency.

1 If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person,
 2 CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY
 3 business operations related to this Agreement.

4 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or
 5 entity is currently excluded, suspended or debarred, or is identified as such after being sanction
 6 screened. Such individual or entity shall be immediately removed from participating in any activity
 7 associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or
 8 sanction(s) to CONTRACTOR for services provided by ineligible person or individual.
 9 CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the
 10 overpayment is verified by ADMINISTRATOR.

11 C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General
 12 Compliance Training available to Covered Individuals.

13 1. CONTRACTORS that have acknowledged to comply with ADMINISTRATOR's
 14 Compliance Program shall use its best efforts to encourage completion by all Covered Individuals;
 15 provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated
 16 representative to complete the General Compliance Training when offered.

17 2. Such training will be made available to Covered Individuals within thirty (30) calendar
 18 days of employment or engagement.

19 3. Such training will be made available to each Covered Individual annually.

20 4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide
 21 copies of training certification upon request.

22 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
 23 compliance training. ADMINISTRATOR shall provide instruction on group training completion while
 24 CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR,
 25 CONTRACTOR shall provide copies of the certifications.

26 D. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized
 27 Provider Training, where appropriate, available to Covered Individuals.

28 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered
 29 Individuals relative to this Agreement.

30 2. Such training will be made available to Covered Individuals within thirty (30) calendar
 31 days of employment or engagement.

32 3. Such training will be made available to each Covered Individual annually.

33 4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall
 34 provide copies of the certifications upon request.

35 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
 36 compliance training. ADMINISTRATOR shall provide instructions on completing the training in a

37 //

1 group setting while CONTRACTOR shall retain the certifications. Upon written request by
2 ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

3 E. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

4 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care
5 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner
6 and are consistent with federal, state and county laws and regulations. This includes compliance with
7 federal and state health care program regulations and procedures or instructions otherwise
8 communicated by regulatory agencies including the Centers for Medicare and Medicaid Services or
9 their agents.

10 2. CONTRACTOR shall not submit any false, fraudulent, inaccurate and/or fictitious claims
11 for payment or reimbursement of any kind.

12 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also
13 fully documented. When such services are coded, CONTRACTOR shall use proper billing codes which
14 accurately describes the services provided and must ensure compliance with all billing and
15 documentation requirements.

16 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in
17 coding of claims and billing, if and when, any such problems or errors are identified.

18 5. CONTRACTOR shall promptly return any overpayments within forty-five (45) business
19 days after the overpayment is verified by the ADMINISTRATOR.

20 F. Failure to comply with the obligations stated in this Paragraph IV (COMPLIANCE) shall
21 constitute a breach of the Agreement on the part of CONTRACTOR and ground for COUNTY to
22 terminate the Agreement. Unless the circumstances require a sooner period of cure, CONTRACTOR
23 shall have thirty (30) calendar days from the date of the written notice of default to cure any defaults
24 grounded on this Paragraph IV (COMPLIANCE) prior to ADMINITRATOR's right to terminate this
25 Agreement on the basis of such default.

26
27 **V. CONFIDENTIALITY**

28 A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any
29 audio and/or video recordings, in accordance with all applicable federal, state and county codes and
30 regulations, including 42 USC §290dd-2 (Confidentiality of Records), as they now exist or may
31 hereafter be amended or changed.

32 1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this
33 Agreement are clients of the Orange County HIV services system, and therefore it may be necessary for
34 authorized staff of ADMINISTRATOR to audit client files, or to exchange information regarding
35 specific clients with COUNTY or other providers of related services contracting with COUNTY.

36 2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written
37 consents for the release of information from all persons served by CONTRACTOR pursuant to this

1 Agreement. Such consents shall be obtained by CONTRACTOR in accordance with CCC,
2 Division 1, Part 2.6, relating to confidentiality of medical information.

3 3. In the event of a collaborative service agreement between HIV services providers,
4 CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information,
5 from the collaborative agency, for clients receiving services through the collaborative agreement.

6 B. Prior to providing any services pursuant to this Agreement, all members of the Board of
7 Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and
8 interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the
9 confidentiality of any and all information and records which may be obtained in the course of providing
10 such services. This Agreement shall specify that it is effective irrespective of all subsequent
11 resignations or terminations of CONTRACTOR members of the Board of Directors or its designee or
12 authorized agent, employees, consultants, subcontractors, volunteers and interns.

13 C. CONTRACTOR shall have in effect a system to protect client records from inappropriate
14 disclosure in connection with activity funded under this Agreement. This system shall include
15 provisions for employee education on the confidentiality requirements, and the fact that disciplinary
16 action may occur upon inappropriate disclosure. CONTRACTOR agrees to implement administrative,
17 physical, and technical safeguards that reasonably and appropriately protect the confidentiality,
18 integrity, and availability of all confidential information that it creates, receives, maintains or transmits.
19 CONTRACTOR shall provide ADMINISTRATOR with information concerning such safeguards.

20 D. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known
21 to CONTRACTOR, or its subcontractors or agents in violation of the applicable state and federal
22 regulations regarding confidentiality.

23 E. CONTRACTOR shall monitor compliance with the above provisions on confidentiality and
24 security, and shall include them in all subcontracts.

25 F. CONTRACTOR shall notify ADMINISTRATOR within twenty-four (24) hours during a work
26 week, of any suspected or actual breach of its computer system.

27 28 **VI. COST REPORT**

29 A. CONTRACTOR shall submit separate Cost Reports for Period One, Period Two, and Period
30 Three or for a portion thereof, to COUNTY no later than forty-five (45) calendar days following
31 termination of this Agreement. CONTRACTOR shall prepare the Cost Report in accordance with all
32 applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of
33 this Agreement. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost
34 centers, services, and funding sources in accordance with such requirements and consistent with prudent
35 business practice, which costs and allocations shall be supported by source documentation maintained
36 by CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice.

37 //

1 1. If CONTRACTOR fails to submit an accurate and complete Cost Report within the time
2 period specified above, ADMINISTRATOR shall have sole discretion to impose one or both of the
3 following:

4 a. CONTRACTOR may be assessed a late penalty of five hundred dollars (\$500) for each
5 business day after the above specified due date that the accurate and complete Cost Report is not
6 submitted. Imposition of the late penalty shall be at the sole discretion of the ADMINISTRATOR. The
7 late penalty shall be assessed separately on each outstanding Cost Report due COUNTY by
8 CONTRACTOR.

9 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
10 pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the
11 accurate and complete Cost Report is delivered to ADMINISTRATOR.

12 2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the
13 Cost Report setting forth good cause for justification of the request. Approval of such requests shall be
14 at the sole discretion of ADMINISTRATOR and shall not be unreasonably denied.

15 3. In the event that CONTRACTOR does not submit an accurate and complete Cost Report
16 within one hundred and eighty (180) calendar days following the termination of this Agreement, and
17 CONTRACTOR has not entered into a subsequent or new agreement for any other services with
18 COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the term of the Agreement
19 shall be immediately reimbursed to COUNTY.

20 B. The Cost Report shall be the final financial and statistical report submitted by CONTRACTOR
21 to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR. CONTRACTOR
22 shall document that costs are reasonable and allowable and directly or indirectly related to the services
23 to be provided hereunder. The Cost Report shall be the final financial record for subsequent audits, if
24 any.

25 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder,
26 less applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set
27 forth in the Referenced Contract Provisions of this Agreement. CONTRACTOR shall not claim
28 expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and
29 COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR,
30 which is subsequently determined to have been for an unreimbursable expenditure or service, shall be
31 repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30)
32 calendar days of submission of the Cost Report or COUNTY may elect to reduce any amount owed
33 CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

34 D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to
35 this Agreement, less applicable revenues and late penalty, are lower than the aggregate of interim
36 monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such
37 reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the

1 Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days
 2 after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any
 3 amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

4 E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to
 5 this Agreement, less applicable revenues and late penalty, are higher than the aggregate of interim
 6 monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided
 7 such payment does not exceed the Maximum Obligation of COUNTY.

8 F. All Cost Reports shall contain the following attestation, which may be typed directly on or
 9 attached to the Cost Report:

10
 11 "I HEREBY CERTIFY that I have executed the accompanying Cost Report and
 12 supporting documentation prepared by _____ for the cost report period
 13 beginning _____ and ending _____ and that, to the best of my
 14 knowledge and belief, costs reimbursed through this Agreement are reasonable and
 15 allowable and directly or indirectly related to the services provided and that this Cost
 16 Report is a true, correct, and complete statement from the books and records of
 17 (provider name) in accordance with applicable instructions, except as noted. I also
 18 hereby certify that I have the authority to execute the accompanying Cost Report.

19
 20 Signed _____
 21 Name _____
 22 Title _____
 23 Date _____"

24 25 **VII. DEBARMENT AND SUSPENSION CERTIFICATION**

26 A. CONTRACTOR certifies that it and its principals:

27 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or
 28 voluntarily excluded by any federal department or agency.

29 2. Have not within a three-year period preceding this Agreement been convicted of or had a
 30 civil judgment rendered against them for commission of fraud or a criminal offense in connection with
 31 obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract
 32 under a public transaction; violation of federal or state antitrust statutes or commission of
 33 embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or
 34 receiving stolen property.

35 3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state,
 36 or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2.
 37 above.

4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

6. Shall include without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction," (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 2 CFR Part 376.

B. The terms and definitions of this paragraph have the meanings set out in the definitions and coverage sections of the rules implementing 51 F.R. 6370.

VIII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS

A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted assignment or delegation in derogation of this paragraph shall be void.

B. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY.

1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%) of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community //

clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

2. If CONTRACTOR is a for-profit organization, any change in the business structure, including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

3. If CONTRACTOR is a governmental organization, any change to another structure, including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an

1 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of
2 this subparagraph shall be void.

3 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
4 CONTRACTOR shall provide written notification of CONTRACTOR's intent to assign the obligations
5 hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to
6 the effective date of the assignment.

7 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
8 CONTRACTOR shall provide written notification within thirty (30) calendar days to
9 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
10 governing body of CONTRACTOR at one time.

11 C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by
12 means of subcontracts, provided such subcontracts are approved in advance, in writing by
13 ADMINISTRATOR, meet the requirements of this Agreement as they relate to the service or activity
14 under subcontract, and include any provisions that ADMINISTRATOR may require.

15 1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a
16 subcontract upon five (5) calendar days' written notice to CONTRACTOR if the subcontract
17 subsequently fails to meet the requirements of this Agreement or any provisions that
18 ADMINISTRATOR has required.

19 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
20 pursuant to this Agreement.

21 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR,
22 amounts claimed for subcontracts not approved in accordance with this paragraph.

23 4. This provision shall not be applicable to service agreements usually and customarily
24 entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional
25 services provided by consultants.

26 27 **IX. EMPLOYEE ELIGIBILITY VERIFICATION**

28 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and
29 regulations regarding the employment of aliens and others and to ensure that employees, subcontractors,
30 and consultants performing work under this Agreement meet the citizenship or alien status requirements
31 set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,
32 subcontractors, and consultants performing work hereunder, all verification and other documentation of
33 employment eligibility status required by federal or state statutes and regulations including, but not
34 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently
35 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
36 covered employees, subcontractors, and consultants for the period prescribed by the law.

37 //

X. EQUIPMENT

A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property of a Relatively Permanent nature with significant value, purchased in whole or in part by ADMINISTRATOR to assist in performing the services described in this Agreement. "Relatively Permanent" is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be depreciated according to GAAP.

B. CONTRACTOR shall obtain ADMINISTRATOR's prior written approval to purchase any Equipment with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting documentation, which includes delivery date, unit price, tax, shipping and serial numbers. CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each purchased asset in an Equipment inventory.

C. Upon ADMINISTRATOR's prior written approval, CONTRACTOR may expense to COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To "expense," in relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of expensed Equipment shall be vested with COUNTY.

D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with funds paid through this Agreement, including date of purchase, purchase price, serial number, model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR,

//

and shall include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if any.

E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any or all Equipment to COUNTY.

F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure approved by ADMINISTRATOR and the Notices Paragraph of this Agreement. In addition, CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of Equipment are moved from one location to another or returned to COUNTY as surplus.

G. Unless this Agreement is followed without interruption by another agreement between the parties for substantially the same type and scope of services, at the termination of this Agreement for

any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this Agreement.

H. CONTRACTOR shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

XI. FACILITIES, PAYMENTS AND SERVICES

A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance with this Agreement. COUNTY shall compensate, and authorize, when applicable, said services. CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff which meet applicable federal and state requirements, and which are necessary for the provision of the services hereunder.

B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation. The reduction to the Maximum Obligation shall be in an amount proportionate to the number of days in which CONTRACTOR was determined to be unable to provide services, staffing, facilities or supplies.

XII. INDEMNIFICATION AND INSURANCE

A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and //

COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Agreement have been complied with. CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an

1 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
2 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
3 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the
4 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor
5 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
6 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection
7 by COUNTY representative(s) at any reasonable time.

8 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,
9 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an
10 amount in excess of \$50,000 (\$5,000 for automobile liability) shall specifically be approved by the
11 CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report. If
12 CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any
13 other indemnity provision(s) in this Agreement, agrees to all of the following:

14 1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all
15 liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or
16 subcontractor's performance of this Agreement, CONTRACTOR shall defend the COUNTY at its sole
17 cost and expense with counsel approved by Board of Supervisors against same; and

18 2. CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any
19 duty to indemnify or hold harmless; and

20 3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to
21 which the duty to defend stated above applies, and the CONTRACTOR's SIR provision shall be
22 interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.

23 E. If CONTRACTOR fails to maintain insurance as required in this Paragraph XI
24 (INDEMNIFICATION AND INSURANCE) for the full term of this Agreement, such failure shall
25 constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate
26 this Agreement.

27 F. QUALIFIED INSURER

28 1. The policy or policies of insurance must be issued by an insurer with a minimum rating of
29 A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current
30 edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred,
31 but not mandatory, that the insurer be licensed to do business in the state of California (California
32 Admitted Carrier).

33 2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of
34 Risk Management retains the right to approve or reject a carrier after a review of the company's
35 performance and financial ratings.

36 G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum
37 limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence \$1,000,000 aggregate
Network Security and Privacy Liability	\$1,000,000 per claims made
Sexual Misconduct Liability	\$1,000,000 per occurrence

H. REQUIRED COVERAGE FORMS

1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a substitute form providing liability coverage at least as broad.

2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

I. REQUIRED ENDORSEMENTS

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:

a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN AGREEMENT.***

b. A primary non-contributing endorsement evidencing that the CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

2. The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

a. An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

//

//

b. A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

J. All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.

L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and within ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate this Agreement.

M. If CONTRACTOR's Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability (ies) policy are "claims made" policy (ies), CONTRACTOR shall agree to maintain Professional Liability coverage for two (2) years following completion of Agreement.

N. The Commercial General Liability policy shall contain a "severability of interests" clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

O. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, such failure shall constitute a breach of CONTRACTOR's obligation hereunder and ground for termination of this Agreement by COUNTY.

Q. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

R. SUBMISSION OF INSURANCE DOCUMENTS

1. The COI and endorsements shall be provided to COUNTY as follows:

- a. Prior to the start date of this Agreement.
- b. No later than the expiration date for each policy.

//

c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance types as set forth in Subparagraph G, above.

2. The COI and endorsements shall be provided to the COUNTY at the address as specified in the Referenced Contract Provisions of this Agreement.

3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance provisions stipulated in this Agreement by the above specified due dates, ADMINISTRATOR shall have sole discretion to impose one or both of the following:

a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late COI or endorsement for each business day, pursuant to any and all Agreements between COUNTY and CONTRACTOR, until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from CONTRACTOR's monthly invoice.

4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

XIII. INSPECTIONS AND AUDITS

A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any other of their authorized representatives, shall have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, medical and client records, of CONTRACTOR that are directly pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth in the Records Management and Maintenance Paragraph of this Agreement. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, and the premises in which they are provided.

B. CONTRACTOR shall actively participate and cooperate with any person specified in Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this Agreement, and shall provide the above-mentioned persons adequate office space to conduct such evaluation or monitoring.

C. AUDIT RESPONSE

1. Following an audit report, in the event of non-compliance with applicable laws and regulations governing funds provided through this Agreement, COUNTY may terminate this Agreement as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR.

2. If the audit reveals that money is payable from one party to the other, that is, reimbursement by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare an annual Single Audit as required by 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. CONTRACTOR shall forward the Single Audit to ADMINISTRATOR within fourteen (14) calendar days of receipt.

E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Agreement.

XIV. LICENSES AND LAWS

A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, accreditations, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws, regulations and requirements of the United States, the State of California, COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be cause for termination of this Agreement.

B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

1. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days of the award of this Agreement:

a. In the case of an individual contractor, his/her name, date of birth, social security number, and residence address;

//

b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity;

c. A certification that CONTRACTOR has fully complied with all applicable federal and state reporting requirements regarding its employees;

d. A certification that CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

2. Failure of CONTRACTOR to timely submit the data and/or certifications required by Subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement; and failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute grounds for termination of this Agreement.

3. It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, or as permitted by federal and/or state statute.

C. CONTRACTOR shall comply with all applicable governmental laws, regulations, and requirements as they exist now or may be hereafter amended or changed. These laws, regulations, and requirements shall include, but not be limited to, the following:

1. ARRA of 2009.
2. CCC §§56 through 56.37, Confidentiality of Medical Information.
3. CCC §§1798.80 through 1798.84, Customer Records.
4. CCC §1798.85, Confidentiality of Social Security Numbers.
5. CCR, Title 9, Rehabilitative and Developmental Services, Division 4; and Title 22 Social Security.
6. HSC, Divisions 10.5 Alcohol and Drug Programs and 10.6. Drug and Alcohol Abuse Master Plans.
7. HSC, §§11839 through 11839.22, Narcotic Treatment Programs.
8. HSC, §11876, Narcotic Treatment Programs.
9. HSC, §§123110 through 123149.5, Patient Access to Health Records.
10. Code of Federal Regulations, Title 42, Public Health.
11. 2 CFR 230, Cost Principles for Nonprofit Organizations.
12. 2 CFR 376, Nonprocurement, Debarment and Suspension.
13. 41 CFR 50, Public Contracts and Property Management.
14. 42 CFR 2, Confidentiality of Alcohol and Drug Abuse Patient Records.
15. 42 CFR 54, Charitable choice regulations applicable to states receiving substance abuse prevention and treatment block grants and/or projects for assistance in transition from homelessness grants.
16. 45 CFR 93, New Restrictions on Lobbying.

17. 45 CFR 96.127, Requirements regarding Tuberculosis.
18. 45 CFR 96.132, Additional Agreements.
19. 45 CFR 96.135, Restrictions on Expenditure of Grant.
20. 45 CFR 160, General Administrative Requirements.
21. 45 CFR 162, Administrative Requirements.
22. 45 CFR 164, Security and Privacy.
23. 48 CFR 9.4, Debarment, Suspension, and Ineligibility.
24. 8 USC §1324 et seq., Immigration Reform and Control Act of 1986.
25. 31 USC §1352, Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions.
26. 42 USC §§285n through 285o, National Institute on Alcohol Abuse and Alcoholism; National Institute on Drug Abuse.
27. 42 USC §§290aa through 290kk-3, Substance Abuse and Mental Health Services Administration.
28. 42 USC §290dd-2, Confidentiality of Records.
29. 42 USC §1320(a), Uniform reporting systems for health services facilities and organizations.
30. 42 USC §§1320d through 1320d-9, Administrative Simplification.
31. 42 USC §12101 et seq., The Americans with Disabilities Act of 1990 as amended.
32. 42 USC §6101 et seq., Age Discrimination Act of 1975.
33. 42 USC §2000d, Civil Rights Act of 1964.
34. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
35. U.S. Department of Health and Human Services, National Institutes of Health (NIH), Grants Policy Statement (10/13).
36. Fact Sheet Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for Co-Occurring Disorders, Mental Health Services Oversight and Accountability Commission, 1/17/08.
37. State of California, Department of Alcohol and Drug Programs Audit Assistance Guide Manual.
38. State of California, Department of Alcohol and Drug Programs, Alcohol and/or Other Drug Program Certification Standards, March 2004.

XV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

A. Any written information or literature, including educational or promotional materials, distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related to this Agreement must be approved at least thirty (30) days in advance and in writing by ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written

//

materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media such as the Internet.

B. Any advertisement through radio, television broadcast, or the Internet, for educational or promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this Agreement must be approved in advance at least thirty (30) days and in writing by ADMINISTRATOR.

C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) in support of the services described within this Agreement, CONTRACTOR shall develop social media policies and procedures and have them available to ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all forms of social media used to either directly or indirectly support the services described within this Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Agreement. CONTRACTOR shall also include any required funding statement information on social media when required by ADMINISTRATOR.

D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement by COUNTY, unless ADMINISTRATOR consents thereto in writing.

E. CONTRACTOR shall also clearly explain through these materials that there shall be no unlawful use of drugs or alcohol associated with the services provided pursuant to this Agreement, as specified in HSC, §11999-11999.3.

XVI. MAXIMUM OBLIGATION

A. The Total Maximum Obligation of COUNTY for services provided in accordance with this Agreement, and the separate Maximum Obligations for each period under this Agreement, are as specified in the Referenced Contract Provisions of this Agreement.

B. Upon written request by CONTRACTOR, and at sole discretion of ADMINISTRATOR, ADMINISTRATOR may increase or decrease the Period One and Period Two Maximum Obligations, provided the total of these Maximum Obligations does not exceed the Total Maximum Obligation of COUNTY as specified in the Referenced Contract Provisions of this Agreement.

C. ADMINISTRATOR may amend the Maximum Obligation by an amount not to exceed ten percent (10%) of Period One funding for this Agreement.

XVII. MINIMUM WAGE LAWS

A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its employees that directly or indirectly provide services pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all its contractors or other persons providing services pursuant to this Agreement on behalf of

CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum Wage.

B. CONTRACTOR shall comply and verify that its contractors comply with all other federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to providing services pursuant to this Agreement.

C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR, where applicable, shall comply with the prevailing wage and related requirements, as provided for in accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

XVIII. NONDISCRIMINATION

A. EMPLOYMENT

1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally, during the term of this Agreement, CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

3. CONTRACTOR shall not discriminate between employees with spouses and employees with domestic partners, or discriminate between domestic partners and spouses of those employees, in the provision of benefits.

4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices from ADMINISTRATOR and/or the United States Equal Employment Opportunity Commission setting forth the provisions of the Equal Opportunity clause.

5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender

//

identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed fulfilled by use of the term EOE.

6. Each labor union or representative of workers with which CONTRACTOR and/or subcontractor has a collective bargaining agreement or other contract or understanding must post a notice advising the labor union or workers' representative of the commitments under this Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq., as applicable, and all other pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one or more of the factors identified above:

1. Denying a client or potential client any service, benefit, or accommodation.
2. Providing any service or benefit to a client which is different or is provided in a different manner or at a different time from that provided to other clients.
3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
4. Treating a client differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service or benefit.

5. Assignment of times or places for the provision of services.

C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all clients through a written statement that CONTRACTOR's and/or subcontractor's clients may file all complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and ADMINISTRATOR or the U.S. Department of Health and Human Services' OCR.

1. Whenever possible, problems shall be resolved informally and at the point of service. CONTRACTOR shall establish an internal informal problem resolution process for clients not able to resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with CONTRACTOR either orally or in writing.

2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.

D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities; and if applicable, as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together with succeeding legislation.

E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or state law.

F. In the event of non-compliance with this paragraph or as otherwise provided by federal and state law, this Agreement may be canceled, terminated or suspended in whole or in part and CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal, state or county funds.

XIX. NOTICES

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Agreement shall be effective:

1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed by ADMINISTRATOR;

2. When faxed, transmission confirmed;

3. When sent by Email; or

4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.

B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed, transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.

C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COUNTY property in possession of CONTRACTOR.

D. For purposes of this Agreement, any notice to be provided by COUNTY may be given by ADMINISTRATOR.

XX. NOTIFICATION OF DEATH

A. Upon becoming aware of the death of any person served pursuant to this Agreement, CONTRACTOR shall immediately notify ADMINISTRATOR.

B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain the name of the deceased, the date and time of death, the nature and circumstances of the death, and the name(s) of CONTRACTOR's officers or employees with knowledge of the incident.

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement; provided, however, weekends and holidays shall not be included for purposes of computing the time within which to give telephone notice and, notwithstanding the time limit herein specified, notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION

a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement.

b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written report hand delivered, faxed, sent via encrypted email, and/or postmarked and sent via U.S. Mail within forty-eight (48) hours of becoming aware of the death due to terminal illness of any person served pursuant to this Agreement.

C. If there are any questions regarding the cause of death of any person served pursuant to this Agreement who was diagnosed with a terminal illness, or if there are any unusual circumstances related to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this Notification of Death Paragraph.

XXI. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS

A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in whole or in part by the COUNTY, except for those events or meetings that are intended solely to serve clients or occur in the normal course of business.

B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance of any applicable public event or meeting. The notification must include the date, time, duration, location and purpose of the public event or meeting. Any promotional materials or event related flyers must be approved by ADMINISTRATOR prior to distribution.

//

//

XXII. RECORDS MANAGEMENT AND MAINTENANCE

A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of this Agreement, prepare, maintain and manage records appropriate to the services provided and in accordance with this Agreement and all applicable requirements.

B. CONTRACTOR shall implement and maintain administrative, technical and physical safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of PHI in violation of the HIPAA, federal and state regulations and/or CHPP. CONTRACTOR shall mitigate to the extent practicable, the known harmful effect of any use or disclosure of PHI made in violation of federal or state regulations and/or COUNTY policies.

C. CONTRACTOR's participant, client, and/or patient records shall be maintained in a secure manner. CONTRACTOR shall maintain participant, client, and/or patient records and must establish and implement written record management procedures.

D. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the commencement of the contract, unless a longer period is required due to legal proceedings such as litigations and/or settlement of claims.

E. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges, billings, and revenues available at one (1) location within the limits of the County of Orange.

F. CONTRACTOR shall ensure all HIPAA (DRS) requirements are met. HIPAA requires that clients, participants and/or patients be provided the right to access or receive a copy of their DRS and/or request addendum to their records. Title 45 CFR §164.501, defines DRS as a group of records maintained by or for a covered entity that is:

1. The medical records and billing records about individuals maintained by or for a covered health care provider;
2. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
3. Used, in whole or in part, by or for the covered entity to make decisions about individuals.

G. CONTRACTOR may retain client, and/or patient documentation electronically in accordance with the terms of this Agreement and common business practices. If documentation is retained electronically, CONTRACTOR shall, in the event of an audit or site visit:

1. Have documents readily available within forty-eight (48) hour notice of a scheduled audit or site visit.
2. Provide auditor or other authorized individuals access to documents via a computer terminal.
3. Provide auditor or other authorized individuals a hardcopy printout of documents, if requested.

H. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and security of PII and/or PHI. CONTRACTOR shall notify COUNTY immediately by telephone call plus email or fax upon the discovery of a Breach of unsecured PHI and/or PII.

I. CONTRACTOR may be required to pay any costs associated with a Breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification. CONTRACTOR shall pay any and all such costs arising out of a Breach of privacy and/or security of PII and/or PHI.

J. CONTRACTOR shall retain all client and/or patient medical records for seven (7) years following discharge of the client and/or patient, with the exception of non-emancipated minors for whom records must be kept for at least one (1) year after such minors have reached the age of eighteen (18) years, or for seven (7) years after the last date of service, whichever is longer.

XXIII. RESEARCH AND PUBLICATION

CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out of, or developed, as a result of this Agreement for the purpose of personal or professional research, or for publication.

XXIV. REVENUE

A. CLIENT FEES – CONTRACTOR shall charge a fee to clients to whom services are provided pursuant to this Agreement, their estates and responsible relatives, in accordance with the fee system designated by ADMINISTRATOR. This fee shall be based upon the person's ability to pay for services, but it shall not exceed the actual cost of services provided. No person shall be denied services because of an inability to pay.

B. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all available third-party reimbursement for which persons served pursuant to this Agreement may be eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR's usual and customary charges.

C. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately ensure proper billing and collection procedures. CONTRACTOR's procedures shall specifically provide for the identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR shall provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which are billed, collected, transferred to a collection agency, or deemed by CONTRACTOR to be uncollectible.

XXV. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Agreement or application thereof to any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in full force and effect, and to that extent the provisions of this Agreement are severable.

//

XXVI. SPECIAL PROVISIONS

A. CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

1. Making cash payments to intended recipients of services through this Agreement.
2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
3. Fundraising.
4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's staff, volunteers, or members of the Board of Directors or governing body.
5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing body for expenses or services.
6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR's staff.
7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
8. Severance pay for separating employees.
9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.
10. Purchasing or improving land, including constructing or permanently improving any building or facility, except for tenant improvements.
11. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal funds (matching).
12. Contracting or subcontracting with any entity other than an individual or nonprofit entity, unless no nonprofit entity is able and willing to provide such services.
13. Producing any information that promotes responsible use, if the use is unlawful, of drugs or alcohol.
14. Promoting the legalization of any drug or other substance included in Schedule 1 of the Controlled Substance Act (21 USC 812).
15. Distributing or aiding in the distribution of sterile needles or syringes for the hypodermic injection of any illegal drug.
16. Assisting, promoting, or deterring union organizing.
17. Providing inpatient hospital services or purchasing major medical equipment.
18. Supplanting current funding for existing services.

//

19. Payment of home mortgages; direct maintenance expense (tires, repairs, etc.) of a privately owned vehicle or any other cost associated with a vehicle, such as lease or loan payments, insurance, or license and registration fees; payment of local or state personal property taxes (for residential property, private automobiles, or any other personal property against which taxes may levied). This restriction does not apply to vehicles operated by organizations for program purposes.

20. To meet professional licensure or program licensure requirements.

B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

1. Funding travel or training (excluding mileage or parking).
2. Making phone calls outside of the local area unless documented to be directly for the purpose of client care.
3. Payment for grant writing, consultants, certified public accounting, or legal services.
4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Agreement.
5. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's clients.

C. Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the affected party. Such acts shall include, but not be limited to, acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight, embargo, public related utility, or governmental statutes or regulations imposed after the fact.

XXVII. STATUS OF CONTRACTOR

CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of COUNTY's employees and shall not be considered in any manner to be COUNTY's employees.

XXVIII. TERM

A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified

1 in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided
2 in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as
3 would normally extend beyond this term, including but not limited to, obligations with respect to
4 confidentiality, indemnification, audits, reporting and accounting.

5 B. Any administrative duty or obligation to be performed pursuant to this Agreement on a
6 weekend or holiday may be performed on the next regular business day.

7 8 **XXIX. TERMINATION**

9 A. Either party may terminate this Agreement, without cause, upon thirty (30) calendar days'
10 written notice given the other party.

11 B. Unless otherwise specified in this Agreement, COUNTY may terminate this Agreement upon
12 five (5) calendar days' written notice if CONTRACTOR fails to perform any of the terms of this
13 Agreement. At ADMINISTRATOR's sole discretion, CONTRACTOR may be allowed up to thirty
14 (30) calendar days for corrective action.

15 C. COUNTY may terminate this Agreement immediately, upon written notice, on the occurrence
16 of any of the following events:

- 17 1. The loss by CONTRACTOR of legal capacity.
- 18 2. Cessation of services.
- 19 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
20 another entity without the prior written consent of COUNTY.
- 21 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
22 required pursuant to this Agreement.
- 23 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of
24 this Agreement.
- 25 6. The continued incapacity of any physician or licensed person to perform duties required
26 pursuant to this Agreement.
- 27 7. Unethical conduct or malpractice by any physician or licensed person providing services
28 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR
29 removes such physician or licensed person from serving persons treated or assisted pursuant to this
30 Agreement.

31 **D. CONTINGENT FUNDING**

- 32 1. Any obligation of COUNTY under this Agreement is contingent upon the following:
 - 33 a. The continued availability of federal, state and county funds for reimbursement of
34 COUNTY's expenditures, and
 - 35 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)
36 approved by the Board of Supervisors.

37 //

2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend, terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

E. In the event this Agreement is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced term of the Agreement.

F. In the event this Agreement is terminated by either party pursuant to Subparagraphs B., C. or D. above, CONTRACTOR shall do the following:

1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is consistent with recognized standards of quality care and prudent business practice.

2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract performance during the remaining contract term.

3. Until the date of termination, continue to provide the same level of service required by this Agreement.

4. If clients are to be transferred to another facility for services, furnish ADMINISTRATOR, upon request, all client information and records deemed necessary by ADMINISTRATOR to effect an orderly transfer.

5. Assist ADMINISTRATOR in effecting the transfer of clients in a manner consistent with client's best interests.

6. If records are to be transferred to COUNTY, pack and label such records in accordance with directions provided by ADMINISTRATOR.

7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and supplies purchased with funds provided by COUNTY.

8. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding commitments which relate to personal services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of ADMINISTRATOR.

G. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

//

//

//

//

XXX. THIRD PARTY BENEFICIARY

Neither party hereto intends that this Agreement shall create rights hereunder in third parties including, but not limited to, any subcontractors or any clients provided services pursuant to this Agreement.

XXXI. WAIVER OF DEFAULT OR BREACH

Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any default or any breach by CONTRACTOR shall not be considered a modification of the terms of this Agreement.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

1 IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange,
2 State of California.

3
4 STRAIGHT TALK CLINIC, INC.

5
6  BY: 6C12A287C48C428... DATED: 5/2/2017
7
8

9 TITLE: Interim Executive Director
10
11
12
13
14
15
16
17

18
19 COUNTY OF ORANGE
20
21

22 BY: _____ DATED: _____
23 HEALTH CARE AGENCY
24
25

26 APPROVED AS TO FORM
27 OFFICE OF THE COUNTY COUNSEL
28 ORANGE COUNTY, CALIFORNIA
29

30  BY: C4E3886C1E6D4FD... DATED: 5/1/2017
31
32 DEPUTY
33
34

35 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
36 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer
37 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution
or by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her
signature alone is required by ADMINISTRATOR.

EXHIBIT A
TO AGREEMENT FOR PROVISION OF
HIV HOUSING SERVICES
BETWEEN
COUNTY OF ORANGE
AND
STRAIGHT TALK CLINIC, INC.
JULY 1, 2017 THROUGH JUNE 30, 2020

I. COMMON TERMS AND DEFINITIONS

A. The parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in the Agreement.

1. Bed Day means one (1) calendar day during which CONTRACTOR provides HIV Transitional Housing Services as described in this Exhibit A of the Agreement. A Bed Day will include the day of admission but not the day of discharge. If admission and discharge occur on the same day, one (1) Bed Day will be charged.

2. Co-Occurring means when a person has at least one substance use disorder and one mental health disorder that can be diagnosed independently of the other.

3. Intake means the initial face-to-face meeting between a Participant and CONTRACTOR staff in which specific information about the Participant is gathered including the ability to pay and standard admission forms pursuant to the Agreement.

4. Linkage means connecting Participant to ancillary services such as outpatient and/or residential treatment and supportive services which may include self-help groups, social services, rehabilitation services, vocational services, job training services, or other appropriate services.

5. Participant Completion means the completion of the Transitional Housing program whereby the Participant has successful linkage to appropriate level of care.

6. Participant means a person who is 18 years or older who has a substance use disorder, is living with HIV, and who is homeless or at risk of becoming homeless.

7. Self-Help Meetings means a non-professional, peer participatory meeting formed by people with a common problem or situation offering mutual support to each other towards a goal or healing or recovery.

8. SUD means a condition in which the use of one or more substances leads to a clinically significant impairment or distress per the DSM-5

9. Transitional Housing means services that are provided to Participants at a twenty-four (24)-hour housing facility. Services are provided in an alcohol and drug free environment and support recovery from alcohol and/or other drug related problems. These services are provided in a non-medical residential setting.

10. Unit of Service means one (1) Bed Day during which services are provided to a Participant pursuant to the Agreement. A day in which a Participant is absent for a CONTRACTOR -sanctioned overnight pass may also be included as a Unit of Service.

B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Common Terms and Definitions Paragraph of this Exhibit A to the Agreement.

II. ASSURANCES

In accordance with funding requirements under Title XXVI of the Public Health Services Act as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Ryan White Act), CONTRACTOR assures that it will:

A. Provide, to the maximum extent practicable, HIV related health care and support services without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual with HIV disease.

B. Provide services in a setting that is accessible to low-income and racial/ethnic minority individuals with HIV disease. Services shall include cultural and language competency to meet the special needs of Participants.

C. Permit and cooperate with any official federal or state investigations undertaken regarding programs conducted under the Ryan White Act.

D. Assure that contract funds are used as payer of last resort. Contractor shall not use contract funds to make payments for any item or service to the extent that payment for that item or service has already been made, or can reasonably expect to be made:

1. Under any State compensation program, under an insurance policy, or under any federal or state health benefits program; or

2. By an entity that provides health services on a prepaid basis; or

3. By third party reimbursement.

E. Comply with the funding requirements regarding charges for services if CONTRACTOR receives any Ryan White funds:

1. In the case of individuals with an income less than or equal to one hundred percent (100%) of the official federal poverty line, CONTRACTOR will not impose charges on any such individual for the provision of services under the Agreement.

2. In the case of individuals with an income greater than one hundred percent (100%) of the official federal poverty line, CONTRACTOR shall:

a) Impose charges on such individuals for the provision of such services.

b) Impose charges according to a schedule of charges that is made available to the public.

In the case of individuals with an income greater than one hundred percent (100%) of the official federal poverty line and not exceeding two hundred percent (200%) of such poverty line, CONTRACTOR shall

//

1 not, for any calendar year, impose charges in an amount exceeding five percent (5%) of the annual gross
2 income of the individual involved.

3 4. In the case of individuals with an income greater than two hundred percent (200%) of the
4 official federal poverty line and not exceeding three hundred percent (300%) of such poverty line,
5 CONTRACTOR will not, for any calendar year, impose charges in an amount exceeding seven (7%)
6 percent of the annual gross income of the individual involved.

7 5. In the case of individuals with an income greater than three hundred percent (300%) of the
8 official federal poverty line, CONTRACTOR will not, for any calendar year, impose charges in an
9 amount exceeding ten percent (10%) of the annual gross income of the individual involved.

10 F. Notify COUNTY immediately, in writing, if CONTRACTOR or any of its principals is
11 debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from
12 participation in this transaction by any Federal Department or Agency.

13 G. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
14 Assurances Paragraph of this Exhibit A to the Agreement.

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

29 //

30 //

31 //

32 //

33 //

34 //

35 //

36 //

37 //

III. BUDGET

A. The following budget is set forth for informational purposes only.

	Period One	Period Two	Period Three
ADMINISTRATIVE COST			
Salaries	\$ 12,616	\$ 12,616	\$ 12,616
Benefits	3,286	3,286	3,286
Services and Supplies	<u>1,096</u>	<u>1,096</u>	<u>1,096</u>
SUBTOTAL ADMINISTRATIVE COST	\$ 16,998	\$ 16,998	\$ 16,998
PROGRAM COST			
Salaries	\$111,337	\$111,337	\$111,337
Benefits	31,203	31,203	31,203
Services and Supplies	<u>55,147</u>	<u>55,147</u>	<u>55,147</u>
SUBTOTAL PROGRAM COST	\$197,687	\$197,687	\$197,687
GROSS COST	\$214,685	\$214,685	\$214,685
REVENUE			
Resident Fees	<u>\$ 6,000</u>	<u>\$ 6,000</u>	<u>\$ 6,000</u>
TOTAL REVENUE	\$ 6,000	\$ 6,000	\$ 6,000
MAXIMUM OBLIGATION	\$208,685	\$208,685	\$208,685

B. Any increases and decreases in budget must be approved, in advance and in writing, by ADMINISTRATOR.

C. BUDGET/STAFFING MODIFICATIONS – CONTRACTOR may request to shift funds between budgeted line items within a program, for the purpose of meeting specific program needs or for providing continuity of care to its consumers, by utilizing a Budget/Staffing Modification Request form provided by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing Modification Request to ADMINISTRATOR for consideration, in advance, which will include a justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and the sustaining annual impact of the shift as may be applicable to the current contract period and/or future contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing Modification Request(s) may result in disallowance of those costs.

1. CONTRACTOR's administrative costs cannot exceed ten percent (10%) of total costs for each service.

2. CONTRACTOR's cumulative total costs shall be evaluated monthly and compared to the percent of expected contracted costs at that point in the contract period. If CONTRACTOR's actual costs deviate ten percent (10%), either above or below the target, ADMINISTRATOR may request a written justification and a CAP or request for budget revision.

3. In the event CONTRACTOR's costs are ten percent (10%) or more below the percent of expected contracted costs; and CONTRACTOR fails to submit a plan within the time period specified by ADMINISTRATOR. ADMINISTRATOR may reduce the Maximum Obligation as set forth in the Referenced Contract Provisions of the Agreement. ADMINISTRATOR shall notify CONTRACTOR in writing of such reduction.

D. CFDA Information

1. The Agreement includes federal funds paid to CONTRACTOR. The CFDA number and associated information for federal funds paid through the Agreement are specified below:

CFDA Year: 2017

CFDA No.: 14.241

Program Title: Housing Opportunities for Persons With AIDS (indirect)

Federal Agency: Department of Housing and Urban Development

Award Name: Cooperative Agreement between County of Orange and City of Santa Ana

Amount: \$208,685 (estimated annually)

CFDA Year: 2017

CFDA No.: 93.914

Program Title: HIV Emergency Relief Project Grants (B)

Federal Agency: Department of Health and Human Services

Award Name: HIV Emergency Relief Project Grants (B) (Ryan White Part A)

Amount: \$0 (estimated annually)

2. CONTRACTOR may be required to have an audit conducted in accordance with federal OMB Circular Number A-133. CONTRACTOR shall be responsible for complying with any federal audit requirements within the reporting period specified by OMB Circular Number A-133.

3. ADMINISTRATOR may revise the CFDA information listed above, and shall notify CONTRACTOR in writing of said revisions.

E. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Budget Paragraph of this Exhibit A to the Agreement.

//

IV. PAYMENTS

A. BASIS FOR REIMBURSEMENT - COUNTY shall pay CONTRACTOR for the actual costs of providing the services described hereunder, less revenues which are actually received by CONTRACTOR; provided, however, that CONTRACTOR's costs are allowable pursuant to county, state, and federal regulations. Non-compliance will require the completion of CAPs by CONTRACTOR. If CAPs are not completed within timeframes as determined by ADMINISTRATOR, payments may be reduced accordingly.

B. PAYMENT METHOD – COUNTY shall pay CONTRACTOR monthly in arrears the actual cost of the services, less revenues that are actually received by CONTRACTOR provided, however, that the total of such payments shall not exceed the COUNTY's Maximum Obligation. CONTRACTOR's invoices shall be on a form approved or provided by ADMINISTRATOR and shall provide such information as is required by ADMINISTRATOR. Invoices are due by the twentieth (20th) calendar day of each month, and payments to CONTRACTOR should be released by COUNTY no later than twenty-one (21) calendar days after receipt of the correctly completed billing form.

C. Monthly payments are interim payments only, and subject to Final Settlement in accordance with the Cost Report Paragraph of the Agreement. Invoices received after the due date may not be paid in accordance with Subparagraph IV.B. above.

D. All invoices to COUNTY shall be supported, at CONTRACTOR's facility, by source documentation including, but not limited to, ledgers, books, vouchers, journals, time sheets, payrolls, appointment schedules, schedules for allocating costs, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.

E. In support of the monthly billing, CONTRACTOR shall submit an Expenditure and Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Agreement. ADMINISTRATOR may use the Expenditure and Revenue Report to determine payment to CONTRACTOR.

F. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of the Agreement.

G. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of the Agreement.

H. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Payments Paragraph of this Exhibit A to the Agreement.

V. RECORDS

A. PARTICIPANT RECORDS – CONTRACTOR shall create and maintain all files pertaining to Participants in the following manner:

1. All files shall be kept in a locked cabinet; and
2. Access shall be limited to the director and other personnel with a legitimate need for access who are specified in CONTRACTOR's policies and procedures.

1 B. CONTENTS OF PARTICIPANT RECORDS – CONTRACTOR shall ensure the contents of
2 individual Participant files include, but are not limited to, the following:

3 1. A personal information form which contains Participant's date of entry, name, middle
4 initial, ethnicity, gender, date of birth, age, and mother's maiden name.

5 2. Documentation of an attempt to document proof of identity and emergency contact.

6 3. Documentation that Transitional Housing is appropriate for the participant.

7 4. Proof of HIV in the form of an HIV Confirmatory test, or verification signed by medical
8 doctor that indicates participant is being treated for HIV disease or states the quantitative viral load.

9 5. ARIES consent form.

10 6. Financial assessment and fee agreement.

11 7. Notice of Privacy Practice acknowledgement signed and dated by participant.

12 8. Client Rights and Responsibilities form signed and dated by participant.

13 9. Grievance form signed by participant.

14 10. House Rules signed by participant.

15 11. Dates and results of all drug and alcohol tests and all forms related to such tests.

16 12. Verification of enrollment in case management by a Ryan White or HOPWA funded provider.

17 13. Documentation of all referrals made.

18 14. Documentation of participation in county operated or contracted SUD or mental health
19 outpatient clinic at least three (3) times a month.

20 15. Dates of the Participant's completion or termination from the facility, including the
21 circumstances of his/her discharge.

22 C. FINANCIAL RECORDS - CONTRACTOR shall prepare and maintain accurate and complete
23 financial records of its costs and operating expenses. Such records shall reflect the actual costs of the
24 type of service for which payment is claimed in accordance with generally accepted accounting
25 principles.

26 1. Any apportionment of or distribution of costs, including indirect costs, to or between
27 programs or cost centers of CONTRACTOR shall be documented, and shall be made in accordance with
28 generally accepted accounting principles.

29 2. CONTRACTOR shall account for funds provided through the Agreement separately from
30 other funds and maintain a clear audit trail for the expenditure of funds.

31 3 The Participant eligibility determination and fee charged to and collected from Participants,
32 together with a record of all invoices rendered and revenues received from any source on behalf of
33 Participants treated pursuant to the Agreement, must be reflected in CONTRACTOR's financial records.

34 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
35 Records Paragraph of this Exhibit A to the Agreement.

36 //

37 //

VI. REPORTS

A. MONTHLY PROGRAMMATIC

1. CONTRACTOR shall submit a monthly programmatic report to ADMINISTRATOR, including information required and on a form approved or provided by ADMINISTRATOR, in conjunction with the billing described in the Payments Paragraph in this Exhibit A to the Agreement. These monthly programmatic reports should be received by ADMINISTRATOR no later than the tenth (10th) calendar day of the month following the report month.

2. CONTRACTOR shall be responsible to include in the monthly programmatic report any problems in implementing the provisions of the Agreement, pertinent facts or interim findings, staff changes, status of license(s) and/or certification(s), changes in population served, and reasons for any changes. Additionally, a statement that the CONTRACTOR is or is not progressing satisfactorily in achieving all the terms of the Agreement shall be included.

3. CONTRACTOR shall input all Units of Service provided in COUNTY's ARIES database.

B. FISCAL

1. CONTRACTOR shall submit a monthly expenditure/revenue report to ADMINISTRATOR, including information required and on a form approved or provided by ADMINISTRATOR, in conjunction with the billing described in the Payments Paragraph in this Exhibit A. These monthly expenditure/revenue reports should be received by ADMINISTRATOR no later than the twentieth (20th) calendar day of the month following the report month.

2. CONTRACTOR shall submit quarterly Year-End Projection Reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall report anticipated year-end actual costs and revenues for CONTRACTOR's program(s) or cost center(s) described in the Services Paragraph of Exhibit A to the Agreement. Such reports shall include actual monthly costs and revenue to date and anticipated monthly costs and revenue to the end of the fiscal year. Year-End Projection Reports shall be due on the third Monday of the following months each year: September, December, and March; unless otherwise agreed to in writing by ADMINISTRATOR

C. STAFFING – CONTRACTOR shall submit monthly Staffing Reports to ADMINISTRATOR. These reports shall be on a form provided or approved by ADMINISTRATOR and shall report staff by position, actual staff hours worked, and the employees' names, and shall indicate which staff have taken Compliance Training in accordance with the Compliance Paragraph of this Agreement. The reports shall be due to ADMINISTRATOR no later than the twentieth (20th) calendar day following the end of the month being reported, unless otherwise agreed to in writing by ADMINISTRATOR.

D. PROGRAMMATIC – CONTRACTOR shall submit narrative programmatic reports to ADMINISTRATOR. These reports shall be on a form provided or approved by ADMINISTRATOR and shall include but not be limited to, staff changes and corresponding impact on services, status of

1 licensure and/or certifications, changes in populations being served and reasons for any such changes.
2 CONTRACTOR shall state whether it is or is not progressing satisfactorily in achieving all the terms of
3 this Agreement and, if not, shall specify what steps will be taken to achieve satisfactory progress.

4 The reports shall be due on the third Monday of January and July each year.

5 E. CONTRACTOR shall submit a year-end narrative report summarizing program activities,
6 accomplishments and challenges, including efforts at client outreach and orientation. The report shall be
7 due on the third Monday of July each year, unless otherwise agreed to in writing by
8 ADMINISTRATOR.

9 F. RSR and CAPER – CONTRACTOR shall submit to ADMINISTRATOR in a format and
10 manner acceptable to, or provided by, ADMINISTRATOR, documentation of services provided,
11 including characteristics of clients receiving those services and descriptive information about
12 CONTRACTOR's organization. RSR documentation shall be received by ADMINISTRATOR no later
13 than February 1 for the preceding calendar year CAPER documentation shall be received by
14 ADMINISTRATOR no later than the third Monday of July each year.

15 G. Countywide Data Reporting – CONTRACTOR shall fully comply with ADMINISTRATOR
16 requirements for real-time data reporting of client demographics and selected service delivery
17 information for Ryan White funded services. For purposes of this Agreement, real-time data reporting
18 shall be defined as entering data into the COUNTY's designated data system within five (5) business
19 days of providing services, unless otherwise agreed to in writing by ADMINISTRATOR.

20 H. QM REPORTS – CONTRACTOR shall submit a QM Report with appropriate signature(s) to
21 ADMINISTRATOR on the last business day of March of each year; unless otherwise agreed to in
22 writing by the ADMINISTRATOR. The QM Report shall include but not be limited to:

- 23 1. Summary of QM activities,
- 24 2. Service-specific outcome measure results,
- 25 3. Summary of findings, and
- 26 4. Summary of how findings will be addressed.

27 I. ADDITIONAL REPORTS – CONTRACTOR shall make additional reports as required by
28 ADMINISTRATOR concerning CONTRACTOR's activities as they affect the services hereunder.
29 ADMINISTRATOR shall be specific as to the nature of information requested and, when possible, shall
30 allow thirty (30) calendar days for CONTRACTOR to respond.

31 J. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
32 Reports Paragraph of this Exhibit A to the Agreement.

33 //

34 //

35 //

36 //

37 //

VII. SERVICES

A. FACILITY - CONTRACTOR shall provide HIV Transitional Housing Services at the following location, or at any other location approved, in writing, by ADMINISTRATOR:

808 La Vergn Way
Santa Ana, CA 92703

1. Facilities shall be maintained in a safe and sanitary condition at all times and shall include:
 - a. Same gender sleeping quarters with separate beds for each participant.
 - b. A lounge area.
 - c. Bathroom and shower - no more than six (6) residents per bathroom.
 - d. Eating area – including space to store belongings, cook, and store food.
 - e. Laundry facilities, including supplies such as detergent, bleach, and softening products at no cost for participants use.
 - f. Co-ed facilities are permitted. Exceptions can be made to same gender sleeping quarters for couples in pre-existing committed relationships as long as both meet eligibility criteria for services.

2. Unless otherwise authorized in writing by ADMINISTRATOR, CONTRACTOR shall maintain regularly scheduled service hours, seven (7) days a week, twenty-four (24) hours per day throughout the year.

B. PERSONS TO BE SERVED

1. CONTRACTOR shall serve adults, ages eighteen (18) years of age and older, who have a history of substance use disorder and are living with HIV. Proof of HIV disease must be documented in the Participant file

2. CONTRACTOR may accept referrals for new Participants from any source.

3. To be eligible for admission, Participants may not have an income that exceeds 80% of the area median income.

4. Participants shall be eligible for one (1) admission per year and have no more than three (3) total admissions over a five (5) year period, unless exception is granted by ADMINISTRATOR. If a Participant has completed residential treatment within the last six (6) months, they may be admitted irrespective of their previous admissions.

5. CONTRACTOR shall admit all eligible Participants during established hours, as approved by ADMINISTRATOR.

C. UNITS OF SERVICE

1. CONTRACTOR shall provide two thousand four hundred twenty-seven (2,427) Units of Service.

//

2. CONTRACTOR shall provide services to a minimum of twenty-five (25) unduplicated Participants during the term of this Agreement.

3. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to adjust the Units of Service set forth in Subparagraphs VII.C.1. and VII.C.2. above.

D. TRANSITIONAL HOUSING SERVICES - CONTRACTOR shall provide a four (4) month alcohol and drug-free transitional home and other services within the specifications stated, unless otherwise authorized by ADMINISTRATOR. Such services shall include, but not be limited to, the following:

1. An alcohol and drug-free, supervised, twenty-four (24) hour living environment for Participants who are currently participating in treatment at a COUNTY-contracted Narcotic Replacement Treatment program, or other COUNTY operated or contracted Substance Use Disorder Outpatient Clinics or Mental Health program and who have no available housing. CONTRACTOR shall not provide direct counseling or treatment services to Participant, however, CONTRACTOR shall provide Participants opportunity to engage in structured daily activities, such as health and fitness activities, recreation, and daily household duties, food preparation and house cleaning. In addition, CONTRACTOR shall encourage Participant to live productive, substance-free lives, which may include working, going to school, attending appropriate twelve-step meetings, other support groups such as HIV, Hepatitis C, Co-Occurring Disorders, or volunteering in the community.

2. CONTRACTOR shall establish House Rules for standards of conduct for all Participants. House rules shall include mandatory participation in an outpatient treatment program requiring at least three (3) sessions per month. Proof of participation shall be documented in Participant files. Any Participant who is discharged from outpatient treatment shall be immediately linked by CONTRACTOR to another treatment program or discharge as appropriate. CONTRACTOR has authority to discharge any Participant who violates house rules. Said House Rules shall be enforced by CONTRACTOR's House Manager, other paid staff, intern(s) or volunteer(s), as designated by CONTRACTOR's Executive Director.

3. Provision of three (3) meals per day, or CONTRACTOR may elect to use a food voucher with a value of fifty dollars (\$50) per Participant per week, or a combination of food and lesser amount food voucher. Meals shall be nutritious and appropriate to the health needs of the Participant.

4. Provision of laundry facilities at no cost to the Participant.

5. Provision of basic living supplies including but not limited to: beds, bed linens, pillows, towels, toilet tissue, soap, shampoo, and toiletry articles appropriate to the health and grooming needs of the Participant.

6. Secure storage for medication.

7. Provision of information regarding public transportation, which shall include bus schedules. CONTRACTOR shall provide Participant with information on how to obtain a bus pass.

8. Participant Supervision:

1 a. CONTRACTOR shall provide onsite supervision of all Participant activities
 2 twenty-four (24) hours per day, seven (7) days a week by paid program staff. Awake supervision is
 3 required for sixteen (16) hours of every twenty-four (24) hour day. CONTRACTOR shall ensure that
 4 the house is maintained in an orderly manner.

5 b. A house log shall be maintained on each shift and supervised by a designated program
 6 staff person. Information to be documented in the house log shall include but not be limited to:

- 7 1) Date, time, signature and title of person making all entries in the house log.
- 8 2) Staff and shift changes which occur at the facility.
- 9 3) Participant name, signature, date, and time when leaving the program site and
 10 estimated time of return. Participants returning to the program site shall sign in.
- 11 4) Special incidents as defined in Subparagraph XVII.C. of the Agreement.

12 9. Case Management:

13 a. CONTRACTOR shall provide Case Management services by contacting outside
 14 agencies and making referrals for services outside the scope of comprehensive substance use disorder
 15 services as identified in the Participant's recovery. Such services include academic education, vocational
 16 training, medical and dental treatment, pre- and post- counseling and testing for infectious diseases,
 17 legal assistance, job-search assistance, financial assistance, child care, and self-help programs such as
 18 twelve (12) step programs. Said linkages, referrals and follow-up are to be documented in the
 19 Participant file.

20 b. Case Management shall assist the Participant to:

- 21 1) Take increasing responsibility for treatment goals established by the individual
 22 Participant in conjunction with outpatient treatment staff.
- 23 2) Increase their use of support systems in the community.
- 24 3) Use leisure time in a constructive manner by supplying Participant with
 25 recreational opportunities, vocational materials, and educational materials.
- 26 4) Maintain adequate grooming.
- 27 5) Improve social skills.
- 28 6) Secure and take medication(s) as prescribed.

29 E. CONTRACTOR shall not allow any Participant to remain more than four (4) months in
 30 CONTRACTOR's facility without prior written approval of ADMINISTRATOR.

31 F. HEALTH AND MEDICAL SERVICES

32 1. CONTRACTOR shall ensure that procedures are established and used in the event a
 33 Participant becomes ill and requires medical transportation and/or medical treatment.

34 2. Medical case management shall be provided by COUNTY public health services.

35 3. CONTRACTOR shall ensure that all Participants have received a TB test in the last year.
 36 If TB symptoms are evident at the time of the screening interview, Participants shall be cleared prior to
 37 admission.

1 G. EMERGENCY MEDICAL TRANSPORTATION SERVICE

2 1. Emergency Medical Transportation – COUNTY shall only pay for emergency medical
3 ambulance or medical van transportation to and from designated Transitional Housing Substance Use
4 Disorder treatment programs or health facilities through the COUNTY's Medical Transportation
5 Agreement under the following conditions:

6 a. Ambulance transportation shall be used for services requiring immediate attention for a
7 Participant due to any sudden or serious illness or injury requiring immediate medical attention, where
8 delay in providing such services may aggravate the medical condition or cause the loss of life.

9 b. When any Participant needs non-emergency transportation as identified in
10 Subparagraph 2. below, and CONTRACTOR cannot transport Participant due to unforeseen
11 circumstances including, but not limited to, staffing constraints, CONTRACTOR shall provide vehicle
12 access within a timely manner or appropriate to Participant's physical condition and/or limitations.

13 c. CONTRACTOR shall utilize the COUNTY's Ambulance Monthly Rotation Call Log
14 to request transportation services from Ambulance Providers designated for transportation within the
15 city of the CONTRACTOR's facility for each said month as identified on the log.

16 d. CONTRACTOR shall use its best efforts to contact Ambulance Providers identified on
17 the Monthly Rotation Call Log as those providers who offer van transportation services if and when an
18 emergency situation occurs and an ambulance is not required.

19 e. CONTRACTOR shall be held liable and may be billed by the Ambulance Provider for
20 services requested by CONTRACTOR that are deemed inappropriate for use and not a covered service
21 in Subparagraph VI of this Exhibit A to the Agreement by the COUNTY.

22 2. Non-Emergency Transportation – CONTRACTOR shall transport Participant, either in
23 CONTRACTOR's own, or COUNTY loaned, vehicle to locations that are considered necessary and/or
24 important to the Participant's recovery plan including, but not limited to, Social Security Administration
25 offices for SSI benefits and for non-emergency medical or mental health services not identified in
26 Subparagraph 1. above that require treatment at a physician office, urgent care, or emergency room
27 when an ambulance provider is not necessary or required for transportation based on the level of
28 severity and/or services required by the Participant.

29 H. SUBSTANCE USE SCREENING

30 1. CONTRACTOR shall have a written policy and procedure statement regarding alcohol and
31 drug screening that includes random drug and/or alcohol testing a minimum of two (2) times a month
32 for all Participants. All urine specimen collection shall be observed by same sex staff. The policy shall
33 be approved by Administrator. The program shall:

34 a. Establish procedures that protect against the falsification and/or contamination of any
35 body specimen sample collected for drug screening; and

36 b. Document results of the drug screening in the Participant's files.

37 //

2. In the event CONTRACTOR wishes to utilize COUNTY-contracted laboratory for drug screening purposes, CONTRACTOR shall collect samples from Participant with approval of COUNTY.

3. Such testing shall be provided at COUNTY's expense. CONTRACTOR shall label and deliver samples to COUNTY's Substance Use Disorder Treatment Services program site(s) specified by ADMINISTRATOR or mail samples to a licensed laboratory, which address shall be provided by ADMINISTRATOR.

4. In the event that any Participant receives a Drug Screening test result indicating any substance use, CONTRACTOR shall formulate and implement a plan of corrective action which shall be documented in the Participant's record, and shall notify COUNTY of such action within two (2) business days of receipt of such test results if the Participant is allowed to remain in the program.

I. PERFORMANCE OUTCOMES

1. CONTRACTOR shall be required to achieve performance objectives, tracking and reporting Performance Outcome Objective statistics in monthly programmatic reports, as appropriate. ADMINISTRATOR recognizes that alterations may be necessary to the following services to meet the objective, and, therefore, revisions may be implemented by mutual agreement between CONTRACTOR and ADMINISTRATOR.

2. Performance Outcome Objectives:

a. Objective 1: CONTRACTOR shall provide effective Transitional Housing to Participants with identified alcohol and/or drug problems as measured by Retention and Completion Rates.

1) Retention Rates shall be calculated by using the number of Participants currently enrolled in or successfully completing the Transitional Housing program divided by the total number of Participants served during the evaluation period.

2) Completion Rates shall be calculated by using the number of Participants successfully completing the Transitional Housing program divided by the total number of Participants discharged during the evaluation period.

b. Objective 2: CONTRACTOR shall ensure Participant is linked to appropriate services providing medical care for HIV infection and treatment of substance use disorder. Linkage rates shall be calculated by dividing the number of successful links of a Participant divided by the number of Participants served for each month.

c. Objective 3: CONTRACTOR shall assist Participant in obtaining permanent housing, and shall also track the Housing Linkage Rate. Housing linkage rate shall be calculated by dividing the number of Participants successfully transitioning to permanent housing by the number of Participants completing the program during the evaluation period.

J. MEETINGS – CONTRACTOR's Executive Director or designee shall participate, when requested, in meetings facilitated by ADMINISTRATOR related to the provision of services pursuant to this Agreement.

//

1 K. CULTURAL COMPETENCY – CONTRACTOR shall make its best effort to provide services
2 pursuant to this Agreement in a manner that is culturally and linguistically appropriate for the
3 population(s) served. CONTRACTOR shall maintain documents of such efforts which may include; but
4 not be limited to: records of participation in COUNTY-sponsored or other applicable training;
5 recruitment and hiring policies and procedures; copies of literature in multiple languages and formats, as
6 appropriate; and descriptions of measures taken to enhance accessibility for, and sensitivity to,
7 individuals who are physically challenged.

8 L. NO PROSELYTIZING POLICY – CONTRACTOR shall not conduct any proselytizing
9 activities, regardless of funding sources, with respect to any person who has been referred to
10 CONTRACTOR by COUNTY under the terms of this Agreement. Further, CONTRACTOR agrees that
11 the funds provided hereunder shall not be used to promote, directly or indirectly, any religion, religious
12 creed or cult, denomination or sectarian institution, or religious belief.

13 M. AUTHORITY – CONTRACTOR shall recognize the authority of OCPD as officers of the
14 court, and shall extend cooperation to OCPD within the constraints of CONTRACTOR's program of
15 substance use disorder residential services.

16 N. NON-SMOKING POLICY – CONTRACTOR shall establish a written non-smoking policy
17 which shall be reviewed and approved by ADMINISTRATOR. At a minimum, the non-smoking policy
18 shall specify that the facility is "smoke free" and that designated smoking areas are outside the visiting
19 areas at the facility.

20 O. PARTICIPANT SIGN IN/OUT LOG AND SCHEDULE – CONTRACTOR shall maintain a
21 resident sign in/out log for all residents, which shall include, but not be limited to, the following:

- 22 1. Participant's schedule for treatment, work, education or other activities;
- 23 2. Location and telephone number where the Participant may be reached; and
- 24 3. Requirement for all Participants to notify the program of any change in his/her schedule.

25 P. GOOD NEIGHBOR POLICY – CONTRACTOR shall establish a Good Neighbor Policy,
26 which shall be reviewed and approved by ADMINISTRATOR. The policy shall include, but not be
27 limited to, staff training to deal with neighbor complaints, staff contact information available to
28 neighboring residents and complaint procedures.

29 Q. VISITATION POLICY – CONTRACTOR shall establish a written visitation policy, which
30 shall be reviewed and approved by ADMINISTRATOR, which shall include, but not be limited to, the
31 following:

- 32 1. Sign in logs;
- 33 2. Visitation hours; and
- 34 3. Designated visiting areas at the Facility.

35 R. TRANSGENDER POLICY – CONTRACTOR shall establish a written Transgender Policy,
36 which shall be reviewed and approved by ADMINISTRATOR. The policy shall include, but not limited
37 to, the following:

- [illegible]

VIII. STAFFING

A. CONTRACTOR shall, at a minimum, provide the following paid staffing expressed in FTEs, which shall be equal to an average of forty (40) hours of work per week.

	<u>Period One</u>	<u>Period Two</u>	<u>Period Three</u>
DIRECT ADMINISTRATION STAFF	<u>FTEs</u>	<u>FTEs</u>	<u>FTEs</u>
Executive Director	0.07	0.07	0.07
Financial Controller	<u>0.10</u>	<u>0.10</u>	<u>0.10</u>
DIRECT ADMINISTRATION	0.17	0.17	0.17
SUBTOTAL			
PROGRAM ADMINISTRATION			
Executive Director	<u>0.04</u>	<u>0.04</u>	<u>0.04</u>
PROGRAM ADMINISTRATION	0.04	0.04	0.04
SUBTOTAL			
DIRECT PROGRAM STAFF			
Executive Director	0.11	0.11	0.11
Program Coordinator	0.80	0.80	0.80
Assistant Coordinator	1.00	1.00	1.00
Recovery Program Aide	<u>2.71</u>	<u>2.71</u>	<u>2.71</u>
DIRECT PROGRAM SUBTOTAL	4.62	4.62	4.62
TOTAL FTEs	4.84	4.84	4.84

B. CONTRACTOR – shall include bilingual/bicultural services to meet the needs of the population to be served under the Agreement. Whenever possible, bilingual/bicultural staff should be retained.

C. STAFF CONDUCT – CONTRACTOR shall establish a written Policies and Procedures for employees, volunteers, interns, and members of the Board of Directors which shall include, but not be limited to, standards related to the use of drugs and/or alcohol; staff-Participant relationships; prohibition of sexual conduct with Participants; prohibition of forging or falsifying documents or drug tests; and real or perceived conflict of interest. Situations that may be perceived as a conflict of interest shall be brought to the ADMINISTRATOR’s attention. Prior to providing any services pursuant to the Agreement all employees, volunteers, and interns shall agree in writing to maintain the standards set forth in the said Policies and Procedures. A copy of the staff code of conduct shall be posted in writing in a prominent place in the treatment facility and updated annually by the Board of Directors.

D. STAFF/VOLUNTEER/INTERN SCREENING – CONTRACTOR shall provide pre-employment “live scan” screening of any staff person providing services pursuant to this Agreement.

1 All new staff, volunteers, and interns shall pass a one-time “live scan” finger printing background check
2 prior to employment. All staff shall be subject to sanction screening as referenced in the Compliance
3 paragraph on a bi-annual basis. All staff shall also be screened by Megan’s Law, OC Courts and OC
4 Sheriff’s Department on an annual basis. The results of the fingerprint checks will be sent directly from
5 the Department of Justice to CONTRACTOR. Results must remain in staff file.

- 6 1. All staff/volunteers/interns, prior to starting services, shall meet the following requirements:
7 a. No person shall have been convicted of a sex offense for which the person is required
8 to register as a sex offender under PC section 290;
9 b. No person shall have been convicted of an arson offense – Violation of PC sections
10 451, 451.1, 451.5, 452, 45231, 453, 454, or 455;
11 c. No person shall have been convicted of any violent felony as defined in PC section
12 667.5, which involves doing bodily harm to another person, for which the staff member was convicted
13 within five (5) years prior to employment;
14 d. No person shall be on parole or probation;
15 e. No person shall participate in the criminal activities of a criminal street gang and/or
16 prison gang; and
17 f. No person shall have prior employment history of improper conduct, including but not
18 limited to, forging or falsifying documents or drug tests, sexual assault or sexual harassment, or
19 inappropriate behavior with staff or residents at another treatment Facility.

20 2. Exceptions to staffing requirements set forth above, may be requested if CONTRACTOR
21 deems the decision will benefit the program. Requests for exceptions shall be submitted in writing and
22 approved in advance by ADMINISTRATOR.

23 E. STAFF TRAINING – CONTRACTOR shall develop a written plan for staff training. All Staff
24 training shall be documented and maintained as part of the training plan.

25 1. CONTRACTOR shall ensure that within the first (1st) year of employment, all program
26 staff, including administrator, volunteers and interns having direct contact with Participants shall
27 complete training on:

- 28 a. infectious disease recognition,
29 b. crisis intervention,
30 c. recognizing physical and psychiatric symptoms that require appropriate referrals to
31 other agencies.

32 2. CONTRACTOR shall ensure that on an annual basis, all program staff including
33 administrator, volunteers and interns having direct contact with Participants shall complete:

- 34 a. County Annual Provider Training
35 b. County Annual Compliance Training
36 c. Training on topics related to alcohol and drug use
37 d. Minimum one hour training in cultural competence

1 F. All personnel files shall be complete and made readily accessible to ADMINISTRATOR for
2 purposes of audits and investigations or any other reason deemed necessary by ADMINISTRATOR.

3 G. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Staffing
4 Paragraph of this Exhibit A to the Agreement.

5 //

6 //

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

29 //

30 //

31 //

32 //

33 //

34 //

35 //

36 //

37 //

EXHIBIT B
TO AGREEMENT FOR PROVISION OF
HIV HOUSING SERVICES
BETWEEN
COUNTY OF ORANGE
AND
STRAIGHT TALK CLINIC, INC.
JULY 1, 2017 THROUGH JUNE 30, 2020

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The parties agree that the terms used, but not otherwise defined in the Common Terms and Definitions Paragraph of Exhibit A to the Agreement or in Subparagraph B. below, shall have the same meaning given to such terms under HIPAA, the HITECH Act, and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the terms of the Agreement, some of which may constitute PHI, as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Agreement.

4. The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,

//

1 with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed
2 pursuant to the Agreement.

3 B. DEFINITIONS

4 1. "Administrative Safeguards" are administrative actions, and policies and procedures, to
5 manage the selection, development, implementation, and maintenance of security measures to protect
6 electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection
7 of that information.

8 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted
9 under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

10 a. Breach excludes:

11 1) Any unintentional acquisition, access, or use of PHI by a workforce member or
12 person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use
13 was made in good faith and within the scope of authority and does not result in further use or disclosure
14 in a manner not permitted under the Privacy Rule.

15 2) Any inadvertent disclosure by a person who is authorized to access PHI at
16 CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health
17 care arrangement in which COUNTY participates, and the information received as a result of such
18 disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

19 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief
20 that an unauthorized person to whom the disclosure was made would not reasonably have been able to
21 retain such information.

22 b. Except as provided in Subparagraph a. of this definition, an acquisition, access, use, or
23 disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach
24 unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised
25 based on a risk assessment of at least the following factors:

26 1) The nature and extent of the PHI involved, including the types of identifiers and the
27 likelihood of re-identification;

28 2) The unauthorized person who used the PHI or to whom the disclosure was made;

29 3) Whether the PHI was actually acquired or viewed; and

30 4) The extent to which the risk to the PHI has been mitigated.

31 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy
32 Rule in 45 CFR § 164.501.

33 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in
34 45 CFR § 164.501.

35 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in
36 45 CFR § 160.103.

37 //

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

10. “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to CONTRACTOR other than as permitted or required by this Business Associate Contract or as required by law.

2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY other than as provided for by this Business Associate Contract.

3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.

4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Business Associate Contract.

5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which CONTRACTOR becomes aware. CONTRACTOR must report Breaches of Unsecured PHI in accordance with Subparagraph E. below and as required by 45 CFR § 164.410.

6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply through this Business Associate Contract to CONTRACTOR with respect to such information.

7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an EHR with PHI, and an individual requests a copy of such information in an electronic format, CONTRACTOR shall provide such information in an electronic format.

8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY in writing no later than ten (10) calendar days after said amendment is completed.

9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY's compliance with the HIPAA Privacy Rule.

10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, and to make information related to such Disclosures available as would be required for COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

//

1 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in
2 a time and manner to be determined by COUNTY, that information collected in accordance with the
3 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
4 Disclosures of PHI in accordance with 45 CFR § 164.528.

5 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's
6 obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the
7 requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

8 13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by
9 a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all
10 employees, subcontractors, and agents who have access to the Social Security data, including
11 employees, agents, subcontractors, and agents of its subcontractors.

12 14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant
13 in a criminal proceeding for a violation of HIPAA. COUNTY may terminate the Agreement, if
14 CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may
15 terminate the Agreement, if a finding or stipulation that CONTRACTOR has violated any standard or
16 requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made
17 in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined.
18 COUNTY will consider the nature and seriousness of the violation in deciding whether or not to
19 terminate the Agreement.

20 15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting
21 CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at
22 no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative
23 proceedings being commenced against COUNTY, its directors, officers or employees based upon
24 claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy,
25 which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its
26 subcontractor, employee, or agent is a named adverse party.

27 16. The Parties acknowledge that federal and state laws relating to electronic data security and
28 privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to
29 provide for procedures to ensure compliance with such developments. The Parties specifically agree to
30 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH
31 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon
32 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY
33 concerning an amendment to this Business Associate Contract embodying written assurances consistent
34 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other
35 applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the
36 event:

37 //

1 a. CONTRACTOR does not promptly enter into negotiations to amend this Business
2 Associate Contract when requested by COUNTY pursuant to this Subparagraph C.; or

3 b. CONTRACTOR does not enter into an amendment providing assurances regarding the
4 safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of
5 HIPAA, the HITECH Act, and the HIPAA regulations.

6 17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to
7 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph
8 B.2.a. above.

9 D. SECURITY RULE

10 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish
11 and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR
12 § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to
13 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
14 CONTRACTOR shall develop and maintain a written information privacy and security program that
15 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of
16 CONTRACTOR's operations and the nature and scope of its activities.

17 2. CONTRACTOR shall implement reasonable and appropriate policies and procedures to
18 comply with the standards, implementation specifications and other requirements of 45 CFR Part 164,
19 Subpart C, in compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its
20 current and updated policies upon request.

21 3. CONTRACTOR shall ensure the continuous security of all computerized data systems
22 containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
23 maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents
24 containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
25 maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

26 a. Complying with all of the data system security precautions listed under Subparagraph
27 E., below;

28 b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in
29 conducting operations on behalf of COUNTY;

30 c. Providing a level and scope of security that is at least comparable to the level and scope
31 of security established by the OMB in OMB Circular No. A-130, Appendix III - Security of Federal
32 Automated Information Systems, which sets forth guidelines for automated information systems in
33 Federal agencies;

34 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
35 transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same
36 restrictions and requirements contained in this Subparagraph D. of this Business Associate Contract.

37 //

1 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it
2 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with
3 Subparagraph E. below and as required by 45 CFR § 164.410.

4 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who
5 shall be responsible for carrying out the requirements of this paragraph and for communicating on
6 security matters with COUNTY.

7 E. DATA SECURITY REQUIREMENTS

8 1. Personal Controls

9 a. Employee Training. All workforce members who assist in the performance of
10 functions or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI
11 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
12 behalf of COUNTY, must complete information privacy and security training, at least annually, at
13 CONTRACTOR's expense. Each workforce member who receives information privacy and security
14 training must sign a certification, indicating the member's name and the date on which the training was
15 completed. These certifications must be retained for a period of six (6) years following the termination
16 of Agreement.

17 b. Employee Discipline. Appropriate sanctions must be applied against workforce
18 members who fail to comply with any provisions of CONTRACTOR's privacy P&Ps, including
19 termination of employment where appropriate.

20 c. Confidentiality Statement. All persons that will be working with PHI COUNTY
21 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
22 COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and
23 Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the
24 workforce member prior to access to such PHI. The statement must be renewed annually. The
25 CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection
26 for a period of six (6) years following the termination of the Agreement.

27 d. Background Check. Before a member of the workforce may access PHI COUNTY
28 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
29 COUNTY, a background screening of that worker must be conducted. The screening should be
30 commensurate with the risk and magnitude of harm the employee could cause, with more thorough
31 screening being done for those employees who are authorized to bypass significant technical and
32 operational security controls. The CONTRACTOR shall retain each workforce member's background
33 check documentation for a period of three (3) years.

34 2. Technical Security Controls

35 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
36 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
37 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which

1 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the
2 COUNTY.

3 b. Server Security. Servers containing unencrypted PHI COUNTY discloses to
4 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
5 must have sufficient administrative, physical, and technical controls in place to protect that data, based
6 upon a risk assessment/system security review.

7 c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses
8 to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
9 required to perform necessary business functions may be copied, downloaded, or exported.

10 d. Removable media devices. All electronic files that contain PHI COUNTY discloses to
11 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
12 must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives,
13 floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified
14 algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered "removed from the
15 premises" if it is only being transported from one of CONTRACTOR's locations to another of
16 CONTRACTOR's locations.

17 e. Antivirus software. All workstations, laptops and other systems that process and/or
18 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
19 transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software
20 solution with automatic updates scheduled at least daily.

21 f. Patch Management. All workstations, laptops and other systems that process and/or
22 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
23 transmits on behalf of COUNTY must have critical security patches applied, with system reboot if
24 necessary. There must be a documented patch management process which determines installation
25 timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable
26 patches must be installed within thirty (30) calendar or business days of vendor release. Applications
27 and systems that cannot be patched due to operational reasons must have compensatory controls
28 implemented to minimize risk, where possible.

29 g. User IDs and Password Controls. All users must be issued a unique user name for
30 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
31 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password
32 changed upon the transfer or termination of an employee with knowledge of the password, at maximum
33 within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight
34 characters and must be a non-dictionary word. Passwords must not be stored in readable format on the
35 computer. Passwords must be changed every ninety (90) calendar or business days, preferably every
36 sixty (60) calendar or business days. Passwords must be changed if revealed or compromised.

37 //

1 Passwords must be composed of characters from at least three (3) of the following four (4) groups from
2 the standard keyboard:

- 3 1) Upper case letters (A-Z)
- 4 2) Lower case letters (a-z)
- 5 3) Arabic numerals (0-9)
- 6 4) Non-alphanumeric characters (punctuation symbols)

7 h. Data Destruction. When no longer needed, all PHI COUNTY discloses to
8 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
9 must be wiped using the Gutmann or US DoD 5220.22-M (7 Pass) standard, or by degaussing. Media
10 may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods
11 require prior written permission by COUNTY.

12 i. System Timeout. The system providing access to PHI COUNTY discloses to
13 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
14 must provide an automatic timeout, requiring re-authentication of the user session after no more than
15 twenty (20) minutes of inactivity.

16 j. Warning Banners. All systems providing access to PHI COUNTY discloses to
17 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
18 must display a warning banner stating that data is confidential, systems are logged, and system use is for
19 business purposes only by authorized users. User must be directed to log off the system if they do not
20 agree with these requirements.

21 k. System Logging. The system must maintain an automated audit trail which can
22 identify the user or system process which initiates a request for PHI COUNTY discloses to
23 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
24 or which alters such PHI. The audit trail must be date and time stamped, must log both successful and
25 failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a
26 database, database logging functionality must be enabled. Audit trail data must be archived for at least
27 three (3) years after occurrence.

28 l. Access Controls. The system providing access to PHI COUNTY discloses to
29 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
30 must use role based access controls for all user authentications, enforcing the principle of least privilege.

31 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to
32 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
33 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is
34 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files
35 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as
36 website access, file transfer, and E-Mail.

37 //

n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

a. System Security Review. CONTRACTOR must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a routine procedure in place to review system logs for unauthorized access.

c. Change Control. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity/Disaster Recovery Control

a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY kept in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty four (24) hours.

b. Data Backup Plan. CONTRACTOR must have established documented procedures to backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data. BCP for CONTRACTOR and COUNTY (e.g. the application owner) must merge with the DRP.

5. Paper Document Controls

a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Such PHI

//

1 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
2 baggage on commercial airplanes.

3 b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to
4 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is
5 contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

6 c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or
7 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of
8 through confidential means, such as cross cut shredding and pulverizing.

9 d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
10 creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises
11 of the CONTRACTOR except with express written permission of COUNTY.

12 e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or
13 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left
14 unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement
15 notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the
16 intended recipient before sending the fax.

17 f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or
18 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and
19 secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include
20 five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to
21 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in
22 a single package shall be sent using a tracked mailing method which includes verification of delivery
23 and receipt, unless the prior written permission of COUNTY to use another method is obtained.

24 F. BREACH DISCOVERY AND NOTIFICATION

25 1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify
26 COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a
27 law enforcement official pursuant to 45 CFR § 164.412.

28 a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which
29 such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been
30 known to CONTRACTOR.

31 b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is
32 known, or by exercising reasonable diligence would have known, to any person who is an employee,
33 officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

34 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
35 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written
36 notification within twenty four (24) hours of the oral notification.

37 3. CONTRACTOR's notification shall include, to the extent possible:

1 a. The identification of each Individual whose Unsecured PHI has been, or is reasonably
2 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

3 b. Any other information that COUNTY is required to include in the notification to
4 Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or
5 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day
6 period set forth in 45 CFR § 164.410 (b) has elapsed, including:

7 1) A brief description of what happened, including the date of the Breach and the date
8 of the discovery of the Breach, if known;

9 2) A description of the types of Unsecured PHI that were involved in the Breach (such
10 as whether full name, social security number, date of birth, home address, account number, diagnosis,
11 disability code, or other types of information were involved);

12 3) Any steps Individuals should take to protect themselves from potential harm
13 resulting from the Breach;

14 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to
15 mitigate harm to Individuals, and to protect against any future Breaches; and

16 5) Contact procedures for Individuals to ask questions or learn additional information,
17 which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

18 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
19 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
20 COUNTY.

21 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
22 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
23 CONTRACTOR made all notifications to COUNTY consistent with this Subparagraph F. and as
24 required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or
25 disclosure of PHI did not constitute a Breach.

26 6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or
27 its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

28 7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
29 Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit
30 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as
31 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of
32 the Breach to COUNTY pursuant to Subparagraph F.2. above.

33 8. CONTRACTOR shall continue to provide all additional pertinent information about the
34 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after
35 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable
36 requests for further information, or follow-up information after report to COUNTY, when such request
37 is made by COUNTY.

9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, for the proper management and administration of CONTRACTOR.

b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the proper management and administration of CONTRACTOR or to carry out the legal responsibilities of CONTRACTOR, if:

- 1) The Disclosure is required by law; or
- 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

c. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to carry out legal responsibilities of CONTRACTOR.

3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of COUNTY.

4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as required by law.

H. PROHIBITED USES AND DISCLOSURES

1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on

1 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by
2 42 USC § 17935(d)(2).

3 I. OBLIGATIONS OF COUNTY

4 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of
5 privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
6 CONTRACTOR's Use or Disclosure of PHI.

7 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission
8 by an Individual to use or disclose his or her PHI, to the extent that such changes may affect
9 CONTRACTOR's Use or Disclosure of PHI.

10 3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI
11 that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction
12 may affect CONTRACTOR's Use or Disclosure of PHI.

13 4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that
14 would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

15 J. BUSINESS ASSOCIATE TERMINATION

16 1. Upon COUNTY's knowledge of a material Breach or violation by CONTRACTOR of the
17 requirements of this Business Associate Contract, COUNTY shall:

18 a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the
19 violation within thirty (30) business days; or

20 b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to
21 cure the material Breach or end the violation within thirty (30) days, provided termination of the
22 Agreement is feasible.

23 2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to
24 COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained,
25 or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

26 a. This provision shall apply to all PHI that is in the possession of Subcontractors or
27 agents of CONTRACTOR.

28 b. CONTRACTOR shall retain no copies of the PHI.

29 c. In the event that CONTRACTOR determines that returning or destroying the PHI is not
30 feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
31 destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,
32 CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit
33 further Uses and Disclosures of such PHI to those purposes that make the return or destruction
34 infeasible, for as long as CONTRACTOR maintains such PHI.

35 3. The obligations of this Business Associate Contract shall survive the termination of the
36 Agreement.

37 //

EXHIBIT C
TO AGREEMENT FOR PROVISION OF
HIV HOUSING SERVICES
BETWEEN
COUNTY OF ORANGE
AND
STRAIGHT TALK CLINIC, INC.
JULY 1, 2017 THROUGH JUNE 30, 2020

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in effect or as amended.

A. DEFINITIONS

1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.

2. "Breach of the security of the system" shall have the meaning given to such term under the CIPA, CCC § 1798.29(d).

3. "CMPPA Agreement" means the CMPPA Agreement between SSA and CHHS.

4. "DHCS PI" shall mean PI, as defined below, accessed in a database maintained by the COUNTY or DHCS, received by CONTRACTOR from the COUNTY or DHCS or acquired or created by CONTRACTOR in connection with performing the functions, activities and services specified in the Agreement on behalf of the COUNTY.

5. "IEA" shall mean the IEA currently in effect between SSA and DHCS.

6. "Notice-triggering PI" shall mean the PI identified in CCC § 1798.29(e) whose unauthorized access may trigger notification requirements under CCC § 1709.29. For purposes of this provision, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering PI includes PI in electronic, paper or any other medium.

7. "PII" shall have the meaning given to such term in the IEA and CMPPA.

8. "PI" shall have the meaning given to such term in CCC § 1798.3(a).

9. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or

//

1 regulations that require the production of information, including statutes or regulations that require such
2 information if payment is sought under a government program providing public benefits.

3 10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure,
4 modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or
5 interference with system operations in an information system that processes, maintains or stores PI.

6 **B. TERMS OF AGREEMENT**

7 1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as
8 otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform
9 functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the
10 Agreement provided that such use or disclosure would not violate the CIPA if done by the COUNTY.

11 2. Responsibilities of CONTRACTOR

12 CONTRACTOR agrees:

13 a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or
14 required by this Personal Information Privacy and Security Contract or as required by applicable state
15 and federal law.

16 b. Safeguards. To implement appropriate and reasonable administrative, technical, and
17 physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect
18 against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use
19 or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and
20 Security Contract. CONTRACTOR shall develop and maintain a written information privacy and
21 security program that include administrative, technical and physical safeguards appropriate to the size
22 and complexity of CONTRACTOR's operations and the nature and scope of its activities, which
23 incorporate the requirements of Subparagraph c., below. CONTRACTOR will provide COUNTY with
24 its current policies upon request.

25 c. Security. CONTRACTOR shall ensure the continuous security of all computerized
26 data systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing
27 DHCS PI and PII. These steps shall include, at a minimum:

28 1) Complying with all of the data system security precautions listed in Subparagraph
29 E. of the Business Associate Contract, Exhibit B to the Agreement; and

30 2) Providing a level and scope of security that is at least comparable to the level and
31 scope of security established by the OMB in OMB Circular No. A-130, Appendix III-Security of
32 Federal Automated Information Systems, which sets forth guidelines for automated information systems
33 in Federal agencies.

34 3) If the data obtained by CONTRACTOR from COUNTY includes PII,
35 CONTRACTOR shall also comply with the substantive privacy and security requirements in the
36 CMPPA Agreement between SSA and CHHS and in the Agreement between SSA and DHCS, known as
37 the IEA. The specific sections of the IEA with substantive privacy and security requirements to be

1 complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information
2 Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies
3 Exchanging Electronic Information with SSA. CONTRACTOR also agrees to ensure that any of
4 CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree to the
5 same requirements for privacy and security safeguards for confidential data that apply to
6 CONTRACTOR with respect to such information.

7 d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful
8 effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or
9 its subcontractors in violation of this Personal Information Privacy and Security Contract.

10 e. CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and
11 conditions set forth in this Personal Information and Security Contract on any subcontractors or other
12 agents with whom CONTRACTOR subcontracts any activities under the Agreement that involve the
13 disclosure of DHCS PI or PII to such subcontractors or other agents.

14 f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or
15 COUNTY for purposes of oversight, inspection, amendment, and response to requests for records,
16 injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives
17 DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or
18 DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including
19 employees, contractors and agents of its subcontractors and agents.

20 g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist
21 the COUNTY to the extent necessary to ensure the DHCS's compliance with the applicable terms of the
22 CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS
23 PI, production of DHCS PI, disclosure of a security Breach involving DHCS PI and notice of such
24 Breach to the affected individual(s).

25 h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR
26 agrees to implement reasonable systems for the discovery of any Breach of unsecured DHCS PI and PII
27 or security incident. CONTRACTOR agrees to give notification of any Breach of unsecured DHCS PI
28 and PII or security incident in accordance with Subparagraph F. of the Business Associate Contract,
29 Exhibit B to the Agreement.

30 i. Designation of Individual Responsible for Security. CONTRACTOR shall designate
31 an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for
32 carrying out the requirements of this Personal Information Privacy and Security Contract and for
33 communicating on security matters with the COUNTY.

34 //

35 //

36 //

37 //